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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re G.E., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.P.,

Defendant and Appellant.

A154038

(Alameda County
Super. Ct. No. JD-029111-01)

J.P. (Mother) appeals from jurisdictional and dispositional orders in a juvenile dependency case concerning her child, G.E. (minor). Mother asserts neither the jurisdictional findings nor the dispositional order was supported by substantial evidence. We agree and reverse.

I. BACKGROUND

In December 2017, an altercation occurred between the minor's maternal grandmother and the minor's father (Father), which resulted in the grandmother shooting and killing Father. Mother called the police from outside the home. Upon their arrival, the police requested she go to the police station for questioning. Mother left the minor with neighbors in the adjacent unit, who were family friends. Mother was at the police station from approximately 11:00 p.m. to 6:00 a.m. Upon her return home, she discovered Father's adult son had picked up the minor without Mother's permission.

Mother called the police and was informed the minor was at an address in Stockton. However, the minor was not at the provided address. The following day, Mother located the minor at a paternal aunt's house in Oakland.

There are conflicting accounts of the interaction between Mother and the paternal aunt. An Alameda County Social Services Agency (Agency) social worker who was present, Case Welfare Worker (CWW) Cockerham, reported Mother attempted to gain entry to the house and retrieve the minor. While attempting to do so, CWW Cockerham stated Mother "threatened the paternal aunt and law enforcement responded at the home." Mother, however, denied being hostile or threatening toward the paternal aunt.

The Agency subsequently filed a petition pursuant to section 300, subdivisions (b)(1) and (g) to establish dependency jurisdiction over the minor based on Mother's alleged inability to protect and provide care for the minor. The petition alleged the minor witnessed the murder of Father, was then left at a neighbor's home, and Mother failed to retrieve the minor. The petition further alleged the minor may have witnessed past incidents of domestic violence between Mother and Father, and Mother lacked provisions to care for the minor.

A. The Detention, Jurisdiction, and Disposition Reports

The detention report, which was filed the day after the petition was filed, stated Father was shot and killed "in the presence of the minor" and the minor "witnessed the incident." It asserted the minor "faced imminent danger" based on witnessing the shooting. The report also noted Mother "is reported to have unstable housing and substance use history" and is not caring for her other children.

The report does not identify the source of this information. The investigative narrative only contained a summary of CWW Cockerham's interview with Mother, which occurred on the same day as the incident between Mother and the paternal aunt. During that interview, Mother stated the minor was "present during the incident . . . resulting in [Father's] death" and "in the home while all parties were arguing." The report did not include a summary of a subsequent interview between Mother and another

social worker, CWW Anku, during which Mother specifically stated the minor did not witness the murder. Mother explained she took the minor outside while she was calling the police. The report also noted the minor “appeared healthy and well groomed” with no evidence of marks, bruises, or abuse. Following the detention hearing, the juvenile court ordered the minor removed and instructed the Agency to provide services and visitation to Mother.

The Agency subsequently filed a jurisdiction report recommending the court take jurisdiction of the matter and declare the minor a dependent. The report again indicated the shooting occurred “in the presence of the minor,” noted the minor “may be neglected or harmed if left in the care of [Mother,] who may not be able to meet [the minor’s] basic needs,” and stated Mother “is reported to have unstable housing and substance use history.” This report also did not identify the source of these statements. The only witness statements contained in the report are from Mother and CWW Cockerham, along with notes from a “Team Decision Making Meeting.” Once again, Mother’s statement denied the minor witnessed the shooting, disavowed any drug use, and asserted false allegations were being made against her. Mother also denied the allegations against her during the Team Decision Making Meeting. CWW Cockerham stated Mother was not forthcoming with information during their interview and had threatened the paternal aunt when attempting to regain custody of the minor. CWW Cockerham stated she was unable to complete her interview with Mother because Mother became upset and hostile. The report concluded by requesting additional time to assess the matter.

The initial jurisdiction hearing date was continued and set for a contested hearing. In advance of the contested hearing, the Agency filed a disposition report. The Agency requested the petition allegations be found true, but recommended the minor be returned to Mother. The report states Mother “is in agreement with the recommendation.” In addition to a statement by Mother, which was consistent with her prior statements, the report contained statements from the responding officer, the foster mother, Father’s adult son, and the paternal grandmother. The officer’s statement confirmed Mother and the minor were outside the home when law enforcement arrived, the police requested Mother

to come to the police station for questioning, and the police suggested the minor not accompany Mother. The foster mother reported positive communications with Mother, and the paternal grandmother stated she “never had a problem with [Mother]” and “does not see potential problems with [the] maternal family.”

In assessing the child’s safety, the disposition report stated the minor “will be safe with [Mother]. [CCW Anku] was able to visit [Mother’s] current residence and she has provisions for [the minor’s] return back in her care. [The minor] would be in a safe environment with [Mother] at this time.” The Agency also noted Mother had an extensive family support network and her church, and Mother expressed a desire to engage in counseling for herself and the minor. While the report acknowledged a “contentious relationship between paternal and maternal side[s] of the families” due to the traumatic incident, the report indicated the Agency would utilize The Gathering Place for visitation between the minor and the paternal relatives.

Shortly before the hearing, the Agency filed an addendum report. That report reaffirmed the findings and recommendations of the prior disposition report. It also acknowledged a number of initial allegations against Mother, such as being neglectful toward the minor, not having stable housing, and leaving the minor unsupervised after Father’s death, were proven false upon further investigation. The addendum report stated Mother is committed to the minor’s care, her visits with the minor “have been going well,” and she communicates regularly with the foster mother. The report also noted Mother has toys and clothes ready for the minor when she returns to Mother’s care.

B. The Contested Jurisdiction and Disposition Hearing

A contested hearing was held in early April 2018. Prior to the formal hearing, counsel for the Agency and counsel for Mother both argued why returning the minor to Mother and utilizing family maintenance would be appropriate. After the court responded, “of course the baby is going to be returned to the mother, but it’s not today,” counsel for Mother demanded a contested hearing. CWW Anku and Mother provided testimony. CWW Anku testified: “According to the reports, I know [the minor] was present at the premise[s] when the murder occurred.” When asked if she knew whether

the minor saw Father being shot, CWW Anku responded, “I cannot answer this question.”

CWW Anku also was unable to identify any specific incidents of past domestic violence the minor may have witnessed. CWW Anku only noted the police had previously responded to domestic violence calls at the house, but had not detailed any of those prior incidents and did not know when the last incident of domestic violence between the parents may have occurred.

Similarly, CWW Anku was unable to state whether Mother was transient at the time the petition was filed or able to provide for the minor. CWW Anku explained “those were the initial allegations” and CWW Cockerham did not complete her interview with Mother. She acknowledged “at the time of writing this petition, the agency did not have verification whether [Mother] had [a] suitable residence for [the minor].” CWW Anku noted the Agency has since completed its investigation and acknowledged Mother is stable at this time.

CWW Anku testified the Agency currently “believe[s] that [the minor] would be safe with [Mother] under the provisions of family maintenance services with the agency.” The Agency made this assessment based on Mother’s suitable residence and verified ability to care for the minor, Mother’s future plans to ensure ongoing care for the minor, and the minor’s development, “which shows care and concern has been provided for [the minor].” The social worker also testified Mother had recently initiated contact with the paternal grandparents and is open to having contact with paternal relatives.

Mother testified in accordance with the statements she provided to the social workers. She testified the minor did not witness the shooting and was left in the care of a trusted neighbor when the police requested Mother go to the police station for questioning. She testified at the time of Father’s death, she was able to support the minor and had stable housing, employment, and funds to feed and clothe the minor. Mother further testified the last instance of domestic violence between herself and Father occurred prior to the minor’s birth. Following Father’s death, Mother stated she spoke with his daughter and the paternal grandmother, and described the conversations as

“decent” with “no hostility.” Mother stated she was willing to coordinate visits between the minor and the paternal family, either through the Agency or separately, and described having such contact as “highly important” for the minor.

Mother, the Agency, and counsel for the minor all argued in favor of returning the minor to Mother. Counsel for the Agency emphasized “it would be very important for [the minor] to be bonded with her mother now” and recounted why the Agency believed returning the minor and utilizing family maintenance would best support the family. Counsel for the Agency also argued Mother “was a credible witness” and “sensed that she loves her child and that she wants to be with her and continue to provide . . . for her food, clothing, shelter, et cetera”

Likewise, counsel for minor agreed with the Agency’s recommendation, stating: “The mother has been extremely consistent in her visitation. She’s been at every court hearing. She’s met everything that the social worker has put forward. She’s made her home available. She’s been responsive and responsible in every way that the social worker has asked her to be.” Counsel for the minor also argued the responding police officer’s statements “confirm many of the mother’s account of what happened. She was the one that called 911. She was outside with the child when the police arrived. I think in his comments he indicated that he believed that the mother was protective and stepped outside with the child.” Counsel for the minor concluded any outstanding concerns could be addressed “with an in-home order and family maintenance.”

Finally, counsel for Mother argued removal would be inappropriate here because there has not been a showing of substantial danger to the minor if she resides with Mother.

The juvenile court did not follow the Agency’s recommendation, despite being supported by all parties involved. Instead, the court stated it had concerns “with visitation of the paternal family with the baby” and “did not find [Mother] to be credible regarding the fact that she’s willing to give the paternal side of the family visitation.” The court contended Mother “has shown in the reports that she has not been easy to get along with” and has “anger problems.” The court repeatedly noted that the minor would

be returned to Mother, but only after visitation had begun between the minor and the paternal family. The court ordered the minor removed from Mother's custody, family reunification services to be provided to Mother, and visitation to be arranged with the paternal relatives.

Mother timely appealed. While the appeal was pending, the court ordered custody of the minor returned to Mother with ongoing family maintenance services.

II. DISCUSSION

A. The Agency's Procedural Challenges

As an initial matter, the Agency raises two procedural challenges to Mother's appeal. First, the Agency asserts Mother's appeal is moot because the juvenile court returned custody of the minor to Mother and that placement order has since become final. Second, the Agency contends Mother forfeited her argument that insufficient evidence supported jurisdiction. We address each argument in turn.

1. Mootness

We decide whether an appeal is moot on a case-by-case basis. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488.) Generally, “[a]n action that originally was based on a justiciable controversy cannot be maintained on appeal if all the questions have become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed.” (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) However, “[a]n issue is not moot if the purported error infects the outcome of subsequent proceedings.” (*In re Dylan T.* (1998) 65 Cal.App.4th 765, 769.)

This is not a situation where the court has terminated its jurisdiction, and no effective relief can be granted on appeal to a parent. (See, e.g., *In re N.S.* (2016) 245 Cal.App.4th 53.) Here, the jurisdictional and dispositional findings and orders rendered by the dependency court remain in effect as to Mother, and serve as the basis for ongoing court supervision and orders as to Mother. (Compare with *In re N.S.*, at p. 61 [proceedings moot because “Mother has been awarded custody of N.S., and the jurisdictional findings are not the basis of any current order that is adverse to her”].)

Under such circumstances, Mother's appeal is not moot. Were we to reverse the jurisdictional and dispositional findings and orders as to Mother, the dependency proceedings could be on a markedly different footing than they are now. Accordingly, we will address Mother's appeal on the merits.

B. *Whether Mother Forfeited Her Appeal*

The Agency contends Mother cannot challenge the jurisdictional findings because her attorney conceded jurisdiction was appropriate and only asked the court to conform the petition to proof. We disagree.

“A reviewing court ordinarily will not consider a challenge to a lower court's ruling if an objection could have been, but was not, made below. [Citation.] This rule is applicable in dependency matters, and its purpose is to encourage parties to bring errors to the attention of the juvenile court so that they may be corrected.” (*In re Isabella F.* (2014) 226 Cal.App.4th 128, 136.) But here, Mother preserved her right to challenge the sufficiency of the evidence supporting the juvenile court's orders by requesting—and the court subsequently having—a contested jurisdictional/dispositional hearing.

“ ‘Sufficiency of the evidence has always been viewed as a question necessarily and inherently raised in every contested trial of any issue of fact, and requiring no further steps by the aggrieved party to be preserved for appeal.’ [Citations.] It would improperly weaken the [Agency's] burden of establishing jurisdiction by a preponderance of the evidence to hold that challenges to the juvenile court's findings could so easily be forfeited.” (*Ibid.*)

We recognize Mother's counsel stated, “We don't have a strong objection to the Court assuming jurisdiction over this child. We'll concede the issue of jurisdiction.” We disagree, however, that this statement was sufficient to forfeit Mother's jurisdictional challenge. Rule 5.682(b) of the California Rules of Court requires the juvenile court to inquire whether a parent “intends to admit or deny the allegations of the petition” at the beginning of a jurisdiction hearing. While a parent “may elect to admit the allegations of the petition or plead no contest and waive further jurisdictional hearing,” certain

procedural steps must be followed to effect such a waiver.¹ (Cal. Rules of Court, rule 5.682(b)–(e).) Specifically, “the court must make the following findings noted in the order of the court: [¶] . . . [¶] (4) The parent or guardian understands the nature of the conduct alleged in the petition and the possible consequences of an admission, plea of no contest, or submission; [¶] (5) The admission, plea of no contest, or submission by the parent or guardian is freely and voluntarily made.” (Cal. Rules of Court, rule 5.682(e).)

Here, Mother did not personally admit the jurisdictional allegations as required under California Rules of Court, rule 5.682(d), (e). (Accord *In re Monique T.* (1992) 2 Cal.App.4th 1372, 1376–1377 [error to accept counsel’s waiver of right to contested jurisdictional hearing without explaining rights to mother and accepting her personal waiver].) Nor did the recommendations, as read into the record, include the necessary findings regarding an admission, plea of no contest, or submission by Mother to the jurisdictional allegations. (See Cal. Rules of Court, rule 5.682(e); compare with *Gabrielle A. v. County of Orange* (2017) 10 Cal.App.5th 1268, 1283 [“trial court properly advised the parents of their rights and met the other requirements of accepting a plea [(to the question of jurisdiction)] set forth in California Rules of Court, rule 5.682”].) Counsel’s solitary statement is thus insufficient to waive Mother’s jurisdictional challenge.

C. Substantial Evidence

Mother asserts there was insufficient evidence to support the juvenile court’s findings. We review challenges to the sufficiency of the evidence underlying jurisdictional or dispositional findings for substantial evidence. (*In re J.N.* (2010) 181 Cal.App.4th 1010, 1022.) We affirm the orders so long as there is substantial

¹ California Rules of Court, rule 5.682(d) provides that at a jurisdictional hearing, a parent may elect to (1) admit the petition’s allegations, (2) plead no contest, or (3) submit the jurisdictional determination to the court based on the information provided to the court and waive further jurisdictional hearing. A parent’s admission must be made personally, and “the court must first find and state on the record that it is satisfied that the parent . . . understands the nature of the allegations and the direct consequences of the admission” (Cal. Rules of Court, rule 5.682(b), (c).)

evidence in the record, viewed as a whole, from which a reasonable trier of fact could make the findings in question. (*Ibid.*; *In re Drake M.* (2012) 211 Cal.App.4th 754, 763.) We do not reweigh the evidence or consider whether the court could have drawn a different conclusion. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) “ ‘But substantial evidence “is not synonymous with any evidence. [Citations.] A decision supported by a mere scintilla of evidence need not be affirmed on appeal. [Citation.] . . . ‘The ultimate test is whether it is reasonable for a trier of fact to make the ruling in question in light of the whole record.’ ” ” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560.) Mother bears the burden of demonstrating a lack of sufficiently substantial evidence. (*In re Dakota H.*, at p. 228.)

1. The Jurisdictional Findings

Here, the juvenile court declared the minor a dependent under Welfare and Institutions Code section 300, subdivisions (b)(1) and (g). Subdivision (b)(1) of section 300 brings a child within the court’s jurisdiction when the “child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness.” There are three elements to jurisdiction under section 300: “(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) ‘serious physical harm or illness’ to the minor, or a ‘substantial risk’ of such harm or illness.” (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 820.) The Supreme Court has since clarified that the first element only requires a failure to adequately supervise or protect the minor irrespective of parental culpability. (*In re R.T.* (2017) 3 Cal.5th 622, 630.)

The Agency contends substantial evidence supports the court’s exercise of jurisdiction because of ongoing domestic violence between Mother and Father and, more recently, between the minor’s maternal grandmother and Father. The Agency further asserts there is an ongoing risk to the minor due to the contentious relationship between the maternal and paternal families.

Had Father not died, we certainly would agree with the Agency’s position. Undisputed evidence demonstrates ongoing violence within the home involving Father. Mother acknowledges domestic violence marked her relationship with Father, although

she alleges no such violence had occurred since the minor's birth. Likewise, the Agency reports describe ongoing violence between Father and the maternal grandmother, including an attempt by the grandmother to run over Father with a vehicle and, of course, the incident which triggered the current dependency proceeding. We understand the juvenile court's concern regarding Mother's willingness to expose the minor to such an environment—i.e., despite this history of violence between the grandmother and Father, Mother continued to reside part-time at the grandmother's house with the minor and Father. However, a history of violence does not satisfy the requirements for asserting jurisdiction where, as here, the record contains no evidence the minor suffered serious physical harm or illness as a result of that violence. Because the minor has not suffered serious physical harm or illness, jurisdiction also must be supported by evidence showing the violence is “ongoing” and the minor is at substantial risk of such harm at the time of the jurisdiction finding. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717.)

The Agency contends there is a risk of ongoing violence because of the contentious relationship between the maternal and paternal families and the interaction between Mother and the paternal aunt when Mother was attempting to locate and retrieve the minor. We disagree. First, nothing in the record suggests any history of violence between the two families apart from the conflicts involving the deceased Father. To the contrary, Mother testified she wants a positive relationship with the paternal family and has reached out to the paternal grandmother. While the juvenile court did not find Mother's testimony credible on this issue, the paternal grandmother also stated she did not have any problems with Mother or anticipate potential problems with the maternal side of the minor's family.

Second, the social worker's report of the incident between Mother and the paternal aunt states Mother arrived “asking to gain entry to the home and attempted to get [the minor]. [Mother] threatened the paternal aunt and law enforcement responded at the home.” Even accepting this summary of events as accurate, it does not indicate “ongoing” violence. While the report states Mother “threatened” the aunt, it does not state the threats involved any acts of violence or assert the police were called because

Mother was acting aggressively. To the contrary, Mother stated she was the person who called the police because the paternal aunt was not “fulfilling her agreement to give [Mother] the baby.” The report also does not identify any actual physical aggression or violence by Mother toward the paternal aunt. We further note this interaction occurred because the minor had been taken—without Mother’s permission—in the middle of the night while she was being questioned at the police station. Mother had spent a day looking for the minor. We would be surprised if any parent would not be upset and angry in a similar situation. Apart from this one stressful situation, the record is devoid of any inappropriate behavior by Mother towards any member of the paternal family.

The Agency has not identified any evidence to suggest domestic violence will continue without the presence of Father. All past incidents involved him, and assuming another family member will now initiate such violence is merely speculative. (See *In re D.L.* (2018) 22 Cal.App.5th 1142, 1146 [to establish a defined risk of physical harm to a child, there must be “ ‘some reason beyond mere speculation to believe the alleged conduct will recur’ ”].) Accordingly, the allegations of past family violence, including the incident between the maternal grandmother and Father that gave rise to this petition, are insufficient to establish jurisdiction under Welfare and Institutions Code section 300, subdivision (b)(1).²

2. The Dispositional Order

Mother also contends the court erred in removing the minor. However, we need not address the merits of Mother’s contention because substantial evidence does not

² The Agency does not contend this court should find jurisdiction based on Welfare and Institutions Code section 300, subdivision (g) (no provision for support) or the allegation Mother is transient and lacks provision to provide support to the minor under section 300, subdivision (b)(1). Accordingly, such argument is waived. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.”].) Even if we were to consider such arguments, the record lacks any evidence to support those allegations and, in fact, directly contradicts them. Agency reports and the social worker’s testimony acknowledged Mother had adequate housing, employment, and resources to support the minor.

support the jurisdictional findings. Without proper jurisdiction, the juvenile court had no authority to issue a dispositional order as to Mother. (*In re R.M.* (2009) 175 Cal.App.4th 986, 991.)

III. DISPOSITION

The juvenile court's jurisdictional findings and dispositional order are reversed. The juvenile court is directed to vacate its prior order and enter an order terminating jurisdiction over the minor. To the extent the juvenile court is concerned regarding ongoing visitation with paternal relatives or that Mother has not fully benefited from the services identified in the Agency's detention report, we remind the court Welfare and Institutions Code sections 362, subdivision (d) and 362.4 provide it with authority and discretion to fashion an appropriate exit order regarding relevant matters. (Accord *In re Chantal S.* (1996) 13 Cal.4th 196, 204.)

Margulies, J.

We concur:

Humes, P. J.

Banke, J.

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In re G.E.